

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Telecommunications Division
Carrier Branch**

**RESOLUTION T-17024a
July 20, 2006**

R E S O L U T I O N

RESOLUTION T-17024a. SBC California (U-1001-C). In accordance with Decision 01-12-021 Ordering Paragraph 6, this resolution addresses the monthly and annual ARMIS data on initial and repeat out-of-service repair intervals for residential customers for 2005.

By Advice Letter No. 27928, filed on January 20, 2006

Summary

By Advice Letter (AL) 27928, SBC California (SBC) has submitted its monthly and annual ARMIS data for 2005, as required.

For the entire calendar year 2005, SBC requests that the Commission grant an exemption from penalties which SBC is subject to, in accordance with D.01-12-021 Ordering Paragraphs 7 and 8, for failure to meet annual out-of-service interval standards.

We adopt the Telecommunications Division's following recommendations:

- Grant SBC's request for penalty exemption for initial repair out-of-service intervals due to declared states of emergency for the affected period (i.e., January, February, March, and December, 2005).
- Deny SBC's request for penalty waiver for claimed effects of Customer Requested Appointments (CRAs) on repair out-of-service intervals
- Deny SBC's request for penalty waiver for the remaining months in 2005 from the initial out-of-service standard.
- Order SBC to pay a penalty of \$300,000 per month for eight months for a total of \$2.4 million for non-compliance with initial out-of-service repair interval standard.
- Grant SBC's request for penalty exemption for repeat out-of-service standard for the entire year of 2005 due to declared states of emergency.

DRAFT

Background

The Commission ordered Pacific Bell¹ to file an annual advice letter on its performance in repairing residential outages in response to a complaint (C.00-11-018), filed by the Office of Ratepayer Advocates.² If Pacific Bell failed to meet set standards, it would be penalized \$300,000 for every month it was out of compliance.³ Decision 01-12-021 Ordering Paragraph 6 states:

“Beginning January 20, 2003, Pacific shall file an annual Advice Letter in which it provides monthly and annual ARMIS data on initial and repeat out-of-service repair intervals for residential customers for the prior year. Such filing shall be accompanied by an affidavit, signed by an officer of the company, under penalty of perjury, asserting that the data are correct and that the methodology used for compiling the ARMIS information has not been changed. Pacific shall be subject to penalties if it fails to meet the annual standards of 29.3 average hours (for initial out-of-service [IOOS] repair intervals) and 39.4 average hours (for repeat out-of-service [ROOS] intervals). If Pacific fails to meet either of the annual standards, it shall be subject to penalties for any months in that year in which it exceeds that particular standard.”

The Telecommunications Division (TD) was directed to review these advice letters and make recommendations to the Commission on whether to accept or reject SBC’s adjustments due to catastrophic events or widespread service outages.⁴

In every annual advice letter (AL) that SBC has filed since January 2003 until the instant AL, SBC has declared that it has met the annual IOOS and ROOS standards.⁵ In AL 27928, SBC acknowledges it has missed, on an unadjusted basis, both standards for 2005. The table below shows SBC’s annual results on an unadjusted and adjusted basis as proposed by the carrier.

	Initial OOS Interval (hrs)	Repeat OOS Interval (hrs)
D.01-12-021 Standard	29.3	39.4
Unadjusted Annual Results	45.6	46.8
Adjusted for Weather Catastrophes	36.4	37.6
Adjusted for Weather Catastrophes and CRA Effect	32.1	34.3

¹ Through a series of mergers, Pacific Bell changed its name first to SBC and then to AT&T.

² The Office of Ratepayer Advocates changed its name to the Division of Ratepayer Advocates (DRA).

³ D.01-12-021, Ordering Paragraph 7.

⁴ D. 01-12-021, Ordering Paragraph 10.

⁵ SBC filed AL 23488 containing its IOOS/ROOS for 2002 on January 17, 2003; AL 24538 containing those data for 2003 on January 20, 2004; and AL 26097 containing those data for 2004 on January 20, 2005.

DRAFT

SBC requests that it be exempted from the penalties for all of 2005 for the following reasons:

- The months of January, February, March, and December should be exempted because states of emergency were officially declared during those months.
- Initial and repeat out-of-service intervals necessarily increased because of Customer Requested Appointments.
- The financial burden of penalties is unwarranted, in light of excessive storm-related operational expenses.

Notice and Protests

SBC states that, in compliance with Section III. G. of General Order No. 96.A, it mailed a copy of the AL 27928 to competing and adjacent utilities and /or other utilities, and interested parties, as requested. In addition, SBC states that it sent an e-mail copy of the AL to parties as requested. A notice of this AL was published in the Commission's Daily Calendar on January 30, 2006.

A limited protest to the AL was filed by the Division of Ratepayers Advocates (DRA) on February 8, 2006. SBC responded to DRA's limited protest on February 17, 2006.

Discussion and Analysis

We will discuss each of SBC's reasons for exemption in the order listed above.

A. Exempt January, February, March, and December from penalties because States of Emergency were declared in those months.

Due to severe weather-related events that occurred in 2005, which resulted in declared states of emergency in January, February, March, and December, SBC requests that these months be exempted from the derivation of its residential out-of-service penalties for 2005. Both Governor Schwarzenegger and President Bush declared states of emergency in 2005.

If the four months are excluded from the annual calculations, SBC will have met the annual ROOS standard but not the IOOS standard for 2005. It would still be subject to penalties for the eight months under IOOS standard. See Attachment 1.

DRA reviewed the filing and does not oppose excluding the results of January, February, March, and December due to weather-related catastrophic events. DRA reasons that SBC's claim of "existence of catastrophic events is verifiable by objective means, i.e., the Governor Office's declaration of such events."⁶

⁶ DRA's Limited Protest to SBC AL 27928, pg. 3.

DRAFT

Only under specific circumstances does D.01-12-021 (Decision) permit certain months to be excluded in the calculation of the actual annual repair intervals. These actual values are compared against the preset standards to determine if penalties are warranted. Ordering Paragraph 9 of D.01-12-021 states:

“If a catastrophic event or widespread service outage occurs in one or more months of the year, as part of its annual Advice Letter filing, Pacific shall provide both the unadjusted ARMIS average for the month and year, along with adjusted figures. Pacific shall provide supporting information as to why the month should be excluded for purposes of calculating penalties and work papers that show the date(s) of the catastrophic event and how the adjusted figure was calculated.”

The Decision defines a catastrophic event as “any event in [SBC’s] service area for which there is a declaration of a state of emergency, duly issued under federal or state law.”⁷ A widespread service outage is defined as “any outage affecting at least 3% of [SBC’s] residential customers in the state.”⁸

On January 23, 2006, in response to a Telecommunications Division data request, SBC provided information on the dates of the states of emergency that occurred and the unadjusted and adjusted ARMIS performance measures. The table below summarizes the data on the states of emergency.

States of Emergency				
Date Declared	Start Date	End Date	Issued By	No. of Affected Counties
January 12, 2005	January 6, 2005		Governor Schwarzenegger	1
January 15, 2005	December 28, 2004		Governor Schwarzenegger	7
February 4, 2005	December 27, 2004	January 11, 2005	President Bush	2
March 16, 2005	⁹		Governor Schwarzenegger	8
April 15, 2005	February 16, 2005	February 23, 2005	President Bush	7
January 3, 2006	December 19, 2005		Governor Schwarzenegger	16
January 12, 2006	December 19, 2005		Governor Schwarzenegger	11

⁷ D.01-12-021 footnote 38.

⁸ D.01-12-021 footnote 39.

⁹ Gov. Schwarzenegger stated in this declaration that the previous declaration, issued in January, 2005, remained in effect on March 16, 2005.

DRAFT

Based on data submitted by SBC, TD recommends that no penalties be assessed on SBC for the entire year for the ROOS standard and SBC also be exempted from penalties in the months of January, February, March, and December, 2005 for the IOOS standard.

B. Initial Out-of-Service intervals necessarily increased because SBC allowed customers to make Customer Requested Appointments (CRAs).

SBC asserts: “In addition to the severe and prolonged storms of 2005, SBC California’s 2005 out-of-service results were significantly affected by a substantial increase in the number of customer requested appointments (CRAs), which allow a customer to select an appointment date that is convenient for them, even though that date is later than the first repair date that is offered by SBC California, are not currently excluded from the out-of-service measure. Since 2002, when the 4-hour appointment began to be proactively offered to customers in compliance with D.01-12-021, the response intervals for CRAs have increased 46% for the initial out-of-service intervals and 41% for the repeat out-of-service measure. In 2005, the CRA added over 4 hours to the initial out-of-service response interval and over 3 hours to the repeat out-of-service response intervals. SBC California should not be penalized for honoring customer requested appointments and complying with Decision 01-12-021.”¹⁰

If, in addition to the catastrophic event waiver, the proposed CRA exemption is granted, SBC would now be subject to penalties for five months for non-compliance with the IOOS standard. The incremental impact of the CRA exemption would excuse SBC from three months of penalties under the IOOS standard. See Attachment 1.

In its limited protest, DRA opposes exempting SBC from penalties due to the negative impact of providing CRAs. DRA’s reasons for its opposition to the CRA argument are two-fold. First, DRA requested from SBC both a list of all its out-of-service trouble reports that gives the dates when service failed and the first repair date offered by SBC for each of those reports. SBC provided the former but not the latter. DRA believes that without knowing the first repair dates offered by SBC, it is impossible to determine if the long intervals reportedly due to CRAs are the result of the customer requesting an appointment later in the week (or month) or the result of SBC only offering an appointment later in the week (or month).

In its reply to DRA’s protest, SBC asserts that it maintains a record that is an adequate substitute for DRA’s needs. The substitute is records of both OOS intervals for all trouble calls and OOS intervals for trouble calls marked as CRAs. By subtracting the second from the first, DRA can determine the impact of CRA. SBC further notes that Decision 03-07-035, which requires SBC to report “Average Time to Restore Service for POTS and POTS Out of Service Less Than 24 Hours from those measures, allows SBC to exclude delays resulting from CRAs.”¹¹

¹⁰ SBC AL 27928 pg. 4.

¹¹ SBC Reply to DRA Protest of AL 27928 in a letter to John Leutza dated February 17, 2006.

DRAFT

Second, DRA points out that the negative effect of CRAs on repair intervals is not always clear in the data SBC does retain. For example, in July 2005, 16% of residential repair reports were completed either on the day before the CRA or even sooner. In August, that figure was 18%. DRA concludes, “It is reasonable to assume that it was not always necessary for the customer to be present for SBC to restore service. If that is the case, the question arises why the company did not repair the service in a timelier manner.”¹²

SBC responded to DRA’s second point by using the example of a cable outage. SBC states that it does not wait until a customer’s appointment date to repair cable outages and restore service. Thus, the data cited by DRA are evidence of SBC’s timely service, rather than evidence of the opposite.¹³

Assuming *arguendo* that SBC’s CRA estimates are methodologically valid, SBC has not demonstrated that CRAs were a significant impediment to achieving the standards of 2005. For example, SBC met the standards in 2003 and 2004 without requesting exemptions for states of emergency that were declared during those years, even though the CRA interval increased in those years relative to the CRA interval in 2002. We recognize that the increase in the CRA interval is higher in 2005 than the increase in 2003 and 2004. In its comments to the draft resolution, SBC indicates that the CRA interval increased about 45% from 2002 to 2005. However, if growth in the CRA interval had a significant impact on the repair interval, then we would expect to see an increasing difference between repair intervals with and without CRAs. No such trend was found. More importantly, the change in the average annual repair interval without CRAs from 2002 to 2005 is very similar to the change in the average annual repair interval with CRAs from 2002 to 2005. Under both measures, there was a sharp rise in the repair times relative to 2002 levels as well as to the standard. It should also be noted that the, repair intervals without CRAs would only materially (in terms assessing the penalty) affect the months of June, September, and November, which are far removed from the catastrophic storm months.

¹² DRA protest, pg. 3.

¹³ SBC reply, footnote 2.

DRAFT

Year	IOOS (Hours)	ROOS (Hours)	IOOS variation over standard (29.3)	ROOS variation over standard (39.4)
2002 ¹⁴	26.09	26.35	-3.21	-13.05
2003 ¹⁵	25.98	27.15	-3.32	-12.25
2004 ¹⁶	29.02	30.19	-0.28	-9.21
2005¹⁷	32.1¹⁸	34.3¹⁹	+2.8	-5.1

CRAs are implicitly included in the standards established in the Decision. SBC indicated that, prior to the Decision, it accommodated its customers by setting mutually agreeable appointment times that met the customers' requested timeframes.²⁰ Although, back then, these appointments may not have been designated as CRAs, in fact they were. SBC's comments assert that CRA interval levels implicit in standards are not the same as today's levels. While the interval levels may not be the same, it is not clear that completely excluding the CRA in calculating the actual performance would result in a fair and accurate comparison of actual performance (which excludes CRAs) to the standard (which includes CRAs).

Finally, the Decision established the methodology to calculate the annual performance measures and the standards. They cannot be changed through the resolution process. SBC, however, can file an application to request a new proposed methodology.

SBC argued, in its comments on the draft resolution, that changes to the methodology can be made as long as all the relevant parties have the opportunity to comment. According to SBC, all those parties were noticed in the advice letter process, and the Commission may act through the resolution as it sees fit. TD has reviewed the issue and believes that the most appropriate way to effect changes in a decision is through an application, not through a resolution.

In its comments, SBC states that it should not be penalized for respecting the desires of its customers and complying with the Commission's requirement to proactively offer CRAs. SBC is not being penalized for respecting its customers' wishes but rather for not addressing its customers' outages in a timely manner.

¹⁴ SBC Advice Letter 23488, dated January 17, 2003, page2.

¹⁵ SBC Advice Letter 24538, dated January 20, 2004, page 2.

¹⁶ SBC Advice Letter 26097, dated January 20, 2005, page2.

¹⁷ SBC Advice Letter 27928, dated January 20, 2005, page 4.

¹⁸ Adjusted score for states of emergency.

¹⁹ Adjusted score for states of emergency.

²⁰ SBC response to TD's March 21, 2006 data request.

DRAFT

For the preceding reasons, TD recommends that the Commission not grant SBC an exemption based on CRAs.

C. The financial burden of penalties is unwarranted, in light of excessive storm-related operational expenses.

In its advice letter, SBC states: “[It] incurred substantial storm-related expenses and damages, estimated to be about \$75 million. This amount does not include costs associated with the December 2005 storms, which are still being tabulated. SBC California does not recover these losses under the regulatory framework applicable to SBC California. In light of this substantial financial loss and the increased impact of customer requested appointments, SBC California believes no further penalties are warranted and respectfully requests that the Commission waive all out-of-service penalties for 2005.”²¹

DRA responds that because SBC is covered under New Regulatory Framework (NRF), the “weather related damage to its facilities falls under the category of operational risks and should be borne by the shareholders.” SBC replies that DRA misapprehended SBC’s request for a waiver. SBC agrees that it is not allowed to recover storm related losses under the said regulatory framework, but it is “pointing out that it has experienced substantial losses as a result of extraordinary circumstances in 2005 beyond its control...[and therefore,] it is unwarranted to heap additional out-of-service penalties on SBC California.”²²

SBC countered, in its comments NRF does not preclude SBC’s asking for exemption from the standards because SBC suffered substantial financial losses. Nonetheless, financial losses are not one of the two eligible criteria for exemptions. Penalties can be waived only for catastrophic events and widespread outages.

To fully explore SBC’s request to be exempt from penalties for the entire year, TD also examined whether the utility should be excused for non-compliance because the catastrophes resulted in problems that justifiably extended into subsequent months as authorized in the Decision.²³ TD staff compared the aftermath of the winter 2005 storm with another similar catastrophic event. After reviewing numerous catastrophic events for the past five years of SBC’s California serving area, the most comparable event is the northern California rainstorms of December 2002 to February 2003. Although this event straddles two calendar years, TD’s purpose is simply to examine lagged effects, if any, as opposed to the calculation of IOOS for a particular calendar year.

The rainstorms of 2002-2003 and the rainstorms of 2005 exhibited similar trends. Both rainstorms resulted in declarations of states of emergency for three months in succession for each

²¹ SBC AL 27928, page 5.

²² SBC Reply to Limited Protest, page 3.

²³ D.01-12-021, Conclusion of Law 21.

DRAFT

event. (In 2005, there was a declaration of emergency for December.) While the IOOS interval increased initially for the 2002-2003 storm, the month after the catastrophic event, March 2003, the IOOS interval was reduced and met the standard.

In January 2005, states of emergency were again declared due to a series of rainstorms. However, unlike the previous catastrophic California rainstorm, the IOOS interval standard was not met in the month immediately following the storms or any month after that for the entire year.

One potential reason for SBC's failure to meet the IOOS interval standard in 2005 could be the increase in the total number of IOOS reports. The total number of reports is approximately 16% higher in 2005 than in 2003 for the 3-month period. However, a review of only out-of-service reports does not provide a complete picture. When labor hours per IOOS report was compared for the two events, the 2005 measure was lower than the 2003 measure by approximately 8% during the 3-month period. That is, SBC elected to assign less work effort per service failure in 2005 than it did in 2002-2003.

Based on the prior response to a similar catastrophic event, TD does not recommend exempting SBC from penalties in the post-catastrophic period in 2005. SBC could potentially have met the standards in 2005 by employing more resources, at a minimum level equivalent to the 2002-2003 storm.

SBC responded, in its comments on the resolution, that the preceding analysis is misinformed. SBC argues examining measures over different timeframes and that the appropriate units for comparison would be Outage Reports per Hundred Lines. Using those units, the December 2002- December 2003 event in Northern California recorded 0.76 reports/hundred lines, while the December 2004 – December 2005 event recorded 2.03 reports/hundred lines in Southern California. Thus there was a 167% increase in residential out of service reports. SBC also asserts that it spent 15% more outside technician hours providing service in 2004-2005 than in 2002-2003 timeframe. Outside labor is a subset of total labor force used to arrive at the 8% differential discussed previously. The difference in focus of parameters does not mitigate the fact that SBC did not succeed at responding to the disasters quickly enough to meet the standards.

As mentioned earlier, D.01-12-021 allows an exemption from the standards when there is a widespread service outage. A widespread service outage is defined as an outage affecting at least 3% of SBC's residential customers. The monthly percentage of trouble reports to total residential access lines is less than the 3% threshold used to define a widespread service outage in the Decision; therefore, SBC does not qualify for this exemption.

SBC submitted a number of records on both paper and CD ROM in response to TD's data requests. SBC designated the records as "proprietary and confidential" and stated that the records were submitted pursuant to Public Utilities Code section 583 and General Order ("GO") 66-C.

DRAFT

Under the Public Records Act (Gov. Code § 6250 et seq.), governmental records are presumed to be public unless an exception applies (Gov. Code § 6252). If an exception applies, disclosure is allowed (unless otherwise prohibited by law), but not required. (See Gov. Code § 6254.) In addition to the many express exemptions in the Public Records Act (Gov. Code § 6254), there is a “catchall” exemption, which allows a government agency to withhold records if it can demonstrate that, on the facts of a particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure. (Gov. Code § 6255.)

Thus, the Commission has disclosed records listed as “not open to public inspection” under section 2 of GO 66-C by applying the balancing test on a case-by-case basis or to categories of records. As we have previously stated in a number of decisions and resolutions, section 583 does not in itself create a privilege that a utility can assert against the Commission’s disclosure of documents.

Section 583 does not create for a utility any privileges of nondisclosure. Nor does it designate any specific types of documents as confidential. To justify an assertion that certain documents cannot be disclosed, the utility must derive its support from other parts of the law.

(Re Southern California Edison Company [D.91-12-019] (1991) 42 Cal.P.U.C.2d 298, 301. See also, e.g., Resolution G-3378, issued March 17, 2005, at p. 10.)

The records submitted by SBC appear to be the types of records that should be made public. The burden is on SBC to demonstrate records why the public interest in disclosure is outweighed by the need to keep the records confidential. Along with its comments submitted on the draft resolution, SBC should state any specific privilege that applies to the records and state any other facts that justify nondisclosure. After reviewing SBC’s response, we will determine whether or not to order disclosure.

In its comments, SBC responded to our request to release certain data that SBC classified as confidential. SBC said that the data provided to TD in response to a data request included customer-specific records and information that would prove to be a competitive disadvantage to SBC if it were made public. TD does not intend to release any data in addition to what was contained in the original draft resolution, and SBC did not claim that those particular data were either customer specific or damaging to SBC.

The draft resolution was mailed or e-mailed to all the parties on the SBC Advice Letter Service List and posted on the website on April 11, 2006, in accordance with PU Code Section 311 (g)(1). SBC filed comments on May 1, 2006.

SBC, in its comments on the draft resolution, suggested that the comparison made between the effects of CRAs on IOOS in the years 2002-2004 and CRA effects on ROOS in 2005 were not

DRAFT

valid. That comparison has been eliminated from the analysis. SBC's other comments also have been included and responded to in this resolution.

Findings

1. SBC informed the Commission that it did not meet IOOS and ROOS standards in 2005.
2. SBC requested a penalty waiver, on the basis of declared states of emergency, for IOOS during the months of January, February, March, and December.
3. SBC requested penalty waiver, on the basis of declared states of emergency, for ROOS for the entire year.
4. SBC requested penalty waiver on the basis of additional time due to CRA for IOOS for months of June, September, and November.
5. SBC requested penalty waiver on the basis of incurred excessive storm-related operational cost for IOOS for remaining months of April, May, July, August, and October.
6. A limited protest was filed by DRA on February 8, 2006.
7. SBC replied to DRA limited protest on February 17, 2006.
8. TD is not authorized by D.01-12-021, to consider waiving penalties for any reason other than declared catastrophic events and widespread outage.
9. TD determined that SBC's supporting documents are sufficient to recommend accepting SBC's request for penalty waiver on the basis of states of emergencies for January, February, March, and December 2005, for IOOS and for the entire year for ROOS.
10. TD has adequately responded to the comments submitted by SBC in response to the original draft of this resolution.

IT IS ORDERED THAT:

1. SBC's request for penalty exemption for IOOS due to declared states of emergency for the affected period (i.e., January, February, March, and December, 2005) is granted.
2. SBC request for penalty waiver for claimed effects of CRA on IOOS and ROOS is denied.
3. SBC request for penalty waiver for the remaining months in 2005 from the IOOS standard is denied.

DRAFT

4. In accordance with D.01-12-021, SBC shall pay a penalty of \$300,000 per month for eight months for a total of \$2.4 million for non-compliance with the IOOS standard.
5. SBC's request for penalty exemption for ROOS for the entire year of 2005 is granted.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on July 20, 2006. The following Commissioners approved it:

STEVE LARSON
Executive Director

DRAFT

Attachment 1

Repair Intervals Adjusted for Catastrophic Events (Hours)		
2005	Initial Repair (IOOS) Standard =29.3	Repeat Repair (ROOS) Standard =39.4
January	Exclude	Exclude
February	Exclude	Exclude
March	Exclude	Exclude
April	46.2	49.1
May	38.6	40.1
June	33.3	33.8
July	39.0	39.5
August	35.7	36.5
September	31.8	32.6
October	35.0	35.4
November	31.9	33.2
December	Exclude	Exclude
Annual	36.4	37.6

Repair Intervals Adjusted for Catastrophic Events and Customer Requested Appointments (Hours)		
2005	Initial Repair (IOOS) Standard =29.3	Repeat Repair (ROOS) Standard =39.4
January	Exclude	Exclude
February	Exclude	Exclude
March	Exclude	Exclude
April	40.8	44.9
May	33.6	36.6
June	28.5	30.4
July	34.4	36.1
August	31.9	33.1
September	28.8	30.1
October	31.6	32.9
November	27.9	30.9
December	Exclude	Exclude
Annual	32.1	34.3